

BEFORE THE DIVISION OF WATER RIGHTS

<p>In The Matter Of:</p> <p>Interstate Irrigation and Reservoir Company</p> <p>Attn: Charlie Burgmeier, President</p> <p>RESPONDENT</p>	<p>CONTROL STRUCTURE NOTICE</p> <p>SEAA No. 1329</p> <p>DISTRIBUTION ACCOUNT: 103094</p> <p>WATER RIGHTS: 41-1366, 41-2496</p>
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I. AUTHORITY

The Division of Water Rights ("Division") issues this Notice under UTAH CODE ANN. § 73-5-4 (2008), and in accordance with UTAH ADMIN. CODE R. 655-15 (2008).

U.C.A. § 73-5-4 states in part :

- (1) To assist the state engineer or water commissioner in the regulation, distribution, and measurement of water, a person using water in this state, ... shall construct or install and maintain controlling works and a measuring device at:*
 - (a) each location where water is diverted from a source; and*
 - (b) any other location required by the state engineer.*
- (2) A person using water in this state shall make the controlling works and measuring device accessible to the state engineer or water commissioner.*
- (3) The state engineer shall approve the design of:*
 - (a) the measuring device; and*
 - (b) controlling works so that the state engineer or a water commissioner may regulate and lock the works. ...*
- (6) If a water user refuses or neglects to construct or install the controlling works or measuring device after 30 days' notice to do so by the state engineer, the state engineer may:*
 - (a) forbid the use of water until the user complies with the state engineer's requirement; and*
 - (b) commence enforcement proceedings authorized by Section 73-2-25.*

II. STATEMENT OF FACTS

1. The Respondent diverts water from Burnt Fork under water rights 41-1366 and 41-2496.

2. The point of diversion and the control headgate structure is defined on your water right as being at the location North 1,730 feet and West 350 feet from the S4 Corner of Section 31, Township 3N, Range 17E, Salt Lake Base & Meridian.
3. There is a control structure to bypass flow back to the natural channel that is located a short distance downstream from the diversion structure.
4. According to the reports we've received, the bypass structure functioned well for some time after it was first installed, but now the streambed channel has eroded down (degradation) such that the bypass gate is not able to receive as much water because it is higher than the streambed.
5. The bypass structure is located between the diversion and the flume. Based on our field data it is located at an approximate elevation of 8366 feet and approximate location of North 1560 ft and West 456 ft from the S4 Corner of Section 31, Township 3N, Range 17E, SL B&M.
6. According to the commissioner, the bypass structure does not have the flow capacity to enable him to properly regulate the canal diversion as needed to operate the distribution system properly.

III. ACTIONS REQUIRED

1. The commissioner needs to have the facilities constructed or maintained that will enable him to better control the quantity of water that is delivered into the Interstate Canal.
2. There are various ways that this objective might be achieved. The work that we would recommend and that appears to us to be the least expense to the company and also function properly for the commissioner is to construct a sill or weir with a drop structure across the channel at the downstream end of the spill structure that will increase the water surface elevation within the canal at the spillway gate in order to pass more water through the spillway gate back to the natural channel.
3. There are perhaps other ways to achieve the benefits of this type of regulation such as lower the spillway gates or improve the upstream headgate control but these would likely require more work than increasing the water level at the bypass gates.
4. A stream alteration permit is required for work affecting the beds or banks of streams. If this work is conducted in the canal itself a permit is not required.
5. Other permits may be required from the USDA Forest Service.
6. The work must be completed before July 1, 2010.

IV. ADDITIONAL AGENCY ACTION

1. The Respondent is encouraged to diligently attend to the work required by this Notice. If the work is satisfactorily completed in a timely manner, the Division will conclude this agency action.

2. If the work is not satisfactorily completed in a timely manner, the Division may issue an Order forbidding the use of water until the Respondent has complied, or may commence an enforcement action as allowed under Utah Code Ann. § 73-5-4 (5).
3. If an Order forbidding the use of water is issued and is violated by the Respondent, the Division may commence an enforcement action in accordance with Utah Code Ann. § 73-2-25 (2008).
4. If determined to be in violation an Order, the Respondent may be subject to administrative penalties in accordance with Utah Code Ann. § 73-2-26 (2005), including fines not to exceed \$5,000 per day for knowing violations or \$1,000 per day for unknowing violations and replacement of up to 200% of water diverted without right. In addition, the Respondent may be liable for expenses incurred by the Division in investigating and stopping the violation."

V. FURTHER INFORMATION

If the Respondent has any questions concerning this Notice, state laws and rules, or the required and recommended action, please discuss them with:

Robert Leake
Regional Engineer
Vernal Office/Eastern Region
Utah Division of Water Rights
(435) 781-5327

Ben Anderson
Water Rights Distribution Engineer
Utah Division of Water Rights
(801) 538-7469

1594 W North Temple Ste 220
P.O. Box 166300
Salt Lake City, UT 84104-6300

Dated this 21st day of September, 2009

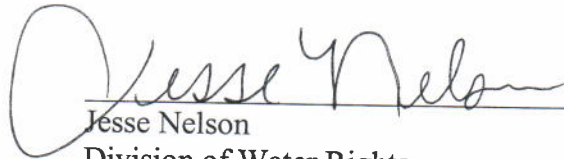


Ben L. Anderson, P.E.
Water Rights Distribution Engineer

CERTIFICATE OF MAILING

I, the undersigned, certify that on this 21st day of September, 2009, I mailed a copy of the foregoing Notice by regular U.S. Mail, delivery confirmation receipt requested, to the following:

**Interstate Irrigation and Reservoir Company
Attn: Charlie Burgmeier
HCR 65 BOX 766
McKinnon, WY 82938-9801**

A handwritten signature in cursive script, reading "Jesse Nelson", is written over a horizontal line.

Jesse Nelson
Division of Water Rights
Field Services Secretary

cc: Robert Leake, Regional Engineer
Todd Covolo, Water Commissioner
David Potter, Interstate Irrigation and Reservoir Company (secretary)